79 pr

MONTANA LEGISLATIVE HISTORY

Chapter 322 ~~19~~ 2003

Bill H 127 S _____ Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on JUDICIARY		
Hearing Date(s)	1/13	X C	Hearing Date(s)	3/14	X C
EXEC. ACTION	1/17	X C	EXEC. ACTION	3/17	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

	TRANSMITTED TO SENATE		
1/27	REFERRED TO BUSINESS AND LABOR		
3/11	HEARING		
3/13	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	10	0
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED ON VOICE VOTE	46	1
3/17	3RD READING CONCURRED	40	9
	RETURNED TO HOUSE		
3/18	SENT TO ENROLLING		
3/19	RETURNED FROM ENROLLING		
3/19	SIGNED BY SPEAKER		
3/19	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
3/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 136		
	EFFECTIVE DATE: 7/01/2003 - ALL SECTIONS		

HB 127 INTRODUCED BY FRITZ *LC0236 DRAFTER: CAMPBELL*

REVISE UNFAIR TRADE AND CONSUMER PROTECTION ACT OF 1973

BY REQUEST OF DEPARTMENT OF ADMINISTRATION

12/20	INTRODUCED		
12/27	REFERRED TO BUSINESS AND LABOR		
1/02	FISCAL NOTE REQUESTED		
1/10	FISCAL NOTE RECEIVED		
1/13	HEARING		
1/17	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	10	8
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	TAKEN FROM 2ND READING; REREFERRED TO JUDICIARY	97	0
1/31	FISCAL NOTE PRINTED		
2/19	HEARING		
2/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	17	1
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/26	2ND READING PASSED	98	0
2/26	REVISED FISCAL NOTE REQUESTED		
2/27	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/28	REFERRED TO JUDICIARY		
3/11	REVISED FISCAL NOTE RECEIVED		
3/11	FISCAL NOTE PRINTED		
3/14	HEARING		
3/17	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	6	2
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	REVISED FISCAL NOTE REQUESTED		
3/19	2ND READING CONCURRED ON VOICE VOTE	50	0
3/20	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/24	REVISED FISCAL NOTE RECEIVED		
3/25	REVISED FISCAL NOTE PRINTED		
4/07	2ND READING SENATE AMENDMENTS CONCURRED	99	1
4/08	3RD READING PASSED AS AMENDED BY SENATE	98	2
4/08	SENT TO ENROLLING		
4/10	RETURNED FROM ENROLLING		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/12	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
4/15	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 322		
	EFFECTIVE DATE: 4/15/2003 - ALL SECTIONS		

HB 128 INTRODUCED BY RICE *LC0509 DRAFTER: LEE EVANS*

CONSTITUTIONAL AMENDMENT TO CREATE NOXIOUS WEED MANAGEMENT TRUST FUND

12/20	INTRODUCED		
12/27	REFERRED TO AGRICULTURE		
1/07	HEARING		
1/15	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	0
1/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/21	2ND READING PASSED	97	2

HOUSE BILL NO. 127

INTRODUCED BY N. FRITZ

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES, TELEMARKETING FRAUD PREVENTION, AND VEHICLE WARRANTY LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; REMOVING THE PROVISION THAT INJUNCTIONS TO RESTRAIN UNLAWFUL ACTS BE ISSUED WITHOUT BOND; PROVIDING THAT THE STATE IS ENTITLED TO ATTORNEY FEES AND COSTS IF IT PREVAILS IN CERTAIN CONSUMER PROTECTION ACTIONS; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO $500 AND MAKING THE AWARD OF TREBLE DAMAGES MANDATORY; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO $10,000; REVISING THE DEFINITION OF "ARTICLE OF COMMERCE"; DELETING PROVISIONS ON COST SURVEYS AS EVIDENCE OF COST AND ON ESTABLISHMENT OF COST SURVEYS; DELETING PROVISIONS ON FORCED SALES AS A BASIS OF COST PRICE; DELETING PROVISIONS RELATING TO FAIR PRICES FOR AGRICULTURAL PRODUCTS; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO $10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR PREVAILING PARTIES; DELETING CERTAIN PROVISIONS RELATING TO AUTOMOBILE GLASS REPAIR AND REPLACEMENT; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT

ORGANIZATIONS; CLARIFYING WHEN A BUYER'S RIGHT TO CANCEL BEGINS TO RUN; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "SUPERVISED FINANCIAL INSTITUTION"; REQUIRING A $500 APPLICATION FEE FOR SELLERS AND TELEMARKETERS REGISTERING WITH THE STATE AND REQUIRING A COURT TO IMPOSE A FINE OF $1,000 TO $10,000 FOR A VIOLATION OF CERTAIN REGISTRATION REQUIREMENTS; ELIMINATING CERTAIN PERSONS AND ENTITIES AS BEING EXEMPT FROM REGISTRATION AND BONDING REQUIREMENTS; CLARIFYING THE EXISTENCE OF A TELEMARKETING AND CONSUMER FRAUD AWARENESS PROGRAM; PROVIDING THAT SOME CLAIMS UNDER THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT MAY BE BROUGHT IN JUSTICE'S COURT; PROVIDING THAT VIOLATION OF CERTAIN NEW VEHICLE WARRANTY LAW PROVISIONS MAY BE A FELONY RATHER THAN A MISDEMEANOR; INCLUDING MOTORCYCLES IN THE DEFINITION OF "MOTOR VEHICLE"; INCREASING THE WARRANTY PERIOD FOR A NEW MOTOR VEHICLE FROM 18,000 TO 30,000 MILES OF OPERATION; PROVIDING FOR AN ARBITRATOR TO BE CHOSEN BY THE DEPARTMENT OF ADMINISTRATION INSTEAD OF THE USE OF AN ARBITRATION PANEL; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-202, 30-14-213, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, 30-14-504, 30-14-506, 30-14-1403, 30-14-1404, 30-14-1405, 30-14-1406, 30-14-1407, 30-14-1413, 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA; REPEALING SECTIONS 30-14-210, 30-14-211, 30-14-212, 30-14-214, 30-14-215, AND 30-14-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

~~(1)~~(2) "Department" means the department of administration created in 2-15-1001.

~~(2)~~(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording~~, wherever situate~~.

~~(3)~~(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

~~(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.~~

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, ~~and~~ any property, tangible or intangible, real, personal, or mixed, ~~and~~ or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 2. Section 30-14-105, MCA, is amended to read:

"30-14-105. Exemptions. ~~Nothing in this~~ This part ~~shall~~ does not apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission or the state auditor ~~acting under statutory authority of this part or the United States~~; or

(2) acts ~~done by the~~ of a retail ~~merchants~~ merchant, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement~~;~~ when the merchant, publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement ~~and did not have a direct financial interest in the advertised product or service;~~.

~~(3) national advertising.~~"

Section 3. Section 30-14-111, MCA, is amended to read:

"30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that ~~any~~ a person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against ~~such~~ the person to restrain by temporary or permanent injunction or temporary restraining order the use of ~~such~~ the unlawful method, act, or practice~~;~~ upon ~~the~~ giving ~~of~~ appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action ~~where~~ in which the relief ~~to be~~ sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) ~~The~~ An action under this section may be brought in the district court in the county in which ~~such~~ a person resides or has ~~his~~ the person's principal place of business or~~, with consent of the parties, may be brought~~ in the district court of Lewis and Clark County.

(4) ~~The courts are~~ A district court is authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part~~, and such injunctions shall be issued without bond~~."

Section 4. Section 30-14-131, MCA, is amended to read:

"30-14-131. Restoration -- court orders -- state attorney fees and costs. (1)(a) The court may enter ~~make such additional~~ orders or judgments ~~as may be~~ necessary to restore to ~~any~~ a person any ~~moneys~~ money or property, real or personal, ~~which~~ that may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

(b) The court may enter any other order or judgment required by equity to carry out the provisions of this part.

(2) If the state prevails in any action brought under this part, the court shall award the state its reasonable attorney fees and costs incurred in bringing the action."

Section 5. Section 30-14-133, MCA, is amended to read:

"30-14-133. Damages -- mandatory treble damages -- notice to public agencies -- attorney fees -- prior judgment as evidence. (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual claim ~~but not~~ or a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his~~ its principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim, but not a class action, may be brought in justice's court. The court ~~may, in its~~

~~discretion,~~ shall, absent an honest mistake, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section~~, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ the judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ is prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103."

Section 6. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) ~~A~~ In addition to any fine that a person might be subject to under subsection (2), a person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than $10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases, the department, acting in the name of the state, may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than ~~$1,000~~ $10,000 for each violation. The fine provided for in this subsection is in addition to any liability that a person might be subject to under subsection (1).

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined an amount not more than $5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. ~~Nothing in this~~ This subsection ~~limits~~ does not limit any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103."

Section 7. Section 30-14-202, MCA, is amended to read:

"30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include:

(i) a product or service of a public utility;

(ii) an insurance product or service; or

(iii) a security.

(2) "Business" includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes but is not limited to the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes; and

(k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger

9

discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of administration provided for in 2-15-1001.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person."

Section 8. Section 30-14-213, MCA, is amended to read:

"30-14-213. Sales excepted. ~~Sections~~ Section 30-14-209~~, 30-14-210, and 30-14-212 do~~ does not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part ~~thereof~~ of the stock for the purpose of discontinuing ~~his~~ the owner's trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation~~, provided~~ if notice is given to the public ~~thereof~~ of the sale;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public ~~thereof~~ of the sale;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions."

Section 9. Section 30-14-219, MCA, is amended to read:

"30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218 is an illegal contract ~~and no~~ upon which a recovery ~~thereon~~ may not be had."

Section 10. Section 30-14-220, MCA, is amended to read:

"**30-14-220. Enforcement by department.** (1) The department ~~shall~~ may prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department ~~shall:~~ may

~~(a)~~ make its own investigation~~;~~.

~~(b) within 60 days of the finding of probable cause make a written report of its investigation; and~~

~~(c) mail a copy of its findings to the person initially giving notice of a violation.~~

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part ~~and~~ or if it appears to the department that a proceeding by it would be in the interest of the public, it ~~shall~~ may issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, ~~at a place~~ the location of the hearing, and ~~upon a day~~ the date of the hearing, which may not be less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) ~~The~~ A person ~~so complained against~~ who is the subject of a complaint may appear at the ~~place and time so fixed~~ hearing and show cause why an order should not be entered by the department requiring ~~such~~ the person to stop the violation of the law charged in the complaint.

(d) Any person may ~~make application~~ apply and upon showing good cause ~~shown may~~ be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding ~~shall~~ must be reduced to writing and filed with the department.

(f) If upon the conclusion of the hearing the department ~~believes~~ determines that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring ~~such~~ the person to stop the ~~acts~~ act or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue ~~such~~ writs ~~as~~ that are ancillary to its jurisdiction or that are necessary in its judgment to prevent injury to the public or to competitors pending the

outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall ~~thereupon~~ issue its own order ~~commanding obedience to~~ requiring compliance with the terms of the order of the department.

(6) Proceedings under this section ~~shall~~ must be given precedence over other civil cases pending in the district court and ~~shall~~ must be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than ~~$1,000~~ $10,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part."

Section 11. Section 30-14-222, MCA, is amended to read:

"30-14-222. Injunctions -- damages -- production of evidence. (1) Any person~~, if~~ who is or might be injured ~~thereby~~, the department, or the attorney general may maintain an action to enjoin ~~a continuance of~~ an act that is in violation of 30-14-205 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218 and for the recovery of damages. If ~~in such action~~ the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218, it shall enjoin the defendant ~~from a continuance thereof~~. It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to ~~such~~ injunctive relief, the plaintiff is entitled to recover from the defendant the greater of three times the amount of actual damages sustained or $1,000.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to $500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of ~~any such~~ the defendant may be brought into court and introduced into evidence by reference. ~~No information so~~ Information obtained pursuant to this subsection may not be used against the defendant as a basis for ~~a misdemeanor~~ prosecution under 30-14-205 through 30-14-209, 30-14-213, 30-14-216 through 30-14-218, ~~and~~ or 30-14-224.

(4) (a) If the department or the attorney general prevails in an action, the department or attorney general is entitled to attorney fees and costs.

(b) In an action brought by a party other than the state, the prevailing party is entitled to attorney fees and costs."

Section 12. Section 30-14-223, MCA, is amended to read:

"30-14-223. ~~Department to institute~~ Department's institution of suit. Upon the ~~third~~ violation of any of the provisions of 30-14-205 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218 by any business, the department ~~shall~~ may institute ~~proper suits or quo warranto proceedings~~ a proceeding in a court of competent jurisdiction for the forfeiture of ~~its~~ the business's charter, rights, franchises or privileges, and powers exercised by ~~such~~ the business and to permanently enjoin it from transacting business in this state. If in ~~such action~~ the proceeding the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218, ~~it~~ the court shall enjoin the business from doing business in this state permanently or for ~~such~~ a period of time ~~as~~ that the court orders or the court shall annul the charter or revoke the franchise of ~~such~~ the business."

Section 13. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) ~~Except as otherwise provided in this section, a~~ A person, whether as principal, agent, officer, or director, who intentionally violates any of the provisions of ~~30-14-206 through 30-14-218~~ 30-14-207 through 30-14-209, 30-14-213, or 30-14-216 through 30-14-218 is guilty of ~~a misdemeanor~~ an offense for each ~~single~~ violation and upon conviction ~~thereof shall~~ may be fined an amount not less than ~~$100~~ $1,000 or more than ~~$1,000~~ $10,000 ~~or~~ and shall be imprisoned for a term not to exceed ~~6 months~~ 2 years~~, or both~~.

(2) A violation of 30-14-205 is punishable by imprisonment ~~in the county jail~~ for a period of not ~~less than 24 hours or~~ more than ~~1 year~~ 5 years ~~or by~~, and the offender may be subject to a fine in an amount not exceeding $25,000~~, or both~~.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the convicted person ~~so convicted~~. ~~In such case no~~ A new license may not be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with ~~him~~ that person in ~~such~~ that business for a period of ~~1 year~~ 5 years."

Section 14. Section 30-14-501, MCA, is amended to read:

"30-14-501. Purpose. The purpose of this part is to afford ~~consumers~~ persons subjected to high pressure personal solicitation sales tactics a cooling-off period."

Section 15. *Section 30-14-502, MCA, is amended to read:*

"30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller ~~who regularly engages in transactions of the same kind~~ to sell goods or services ~~which are primarily for personal, family, or household purposes,~~ when either the seller or a person acting for ~~him~~ the seller contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer, prior to the attempted sale, personally knows the identity of the seller, the name of the business, firm, or organization ~~he~~ that the seller represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; ~~or~~

(d) an attempted sale of an insurance policy; or

(e) an attempted sale of more than $5,000 of goods or services that are not primarily for personal, family, or household purposes.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for ~~him~~ the seller~~,~~ ~~provided~~ if the buyer is required to give consideration in excess of $25 in cash or credit ~~therefor~~.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including an assignee of a seller."

Section 16. Section 30-14-503, MCA, is amended to read:

"30-14-503. Disclosure obligation. Before any personal solicitation, each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization ~~he~~ that the seller represents, and the identity or kinds of goods or services ~~he~~ that the seller wishes to demonstrate or sell~~, and that he wishes to demonstrate or sell the~~

~~identified goods or services~~. When the initial contact is made in person, the seller shall also show the potential buyer an identification card ~~which~~ that clearly states the seller's name and the name of the business or organization ~~he~~ that the seller represents. The disclosures required by this section ~~shall~~ must be made before asking any questions or making any statements except an initial greeting. ~~Nonprofit organizations are exempt from the requirements of this section.~~ Failure to provide the information required by this section is a violation of 30-14-103."

Section 17. Section 30-14-504, MCA, is amended to read:

"30-14-504. Buyer's right to cancel -- time allowed -- notice -- return of goods. (1) Except as provided in ~~subsection (5)~~ subsections (5) and (6), in addition to any other right ~~otherwise~~ to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to ~~such~~ a sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to ~~his~~ the buyer's signing ~~of~~ an agreement or offer to purchase relating to ~~such~~ the sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and ~~shall be~~ is sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

(6) A buyer's right to cancel does not commence running until the seller has provided the buyer with a valid business address and working telephone number for the seller's business."

Section 18. Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer -- retention of goods by buyer -- court award, costs, and attorney fees. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the ~~down payment~~ downpayment includes goods traded in, the goods ~~shall~~ must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the ~~cash down payment~~ downpayment or goods tendered as ~~down payment~~ downpayment, ~~he~~ the seller ~~shall be~~ is liable to the buyer for the entire ~~down payment~~ downpayment, and if the buyer is successful in ~~his~~ a court action ~~therefor~~ for recovery, the court shall also award ~~him~~ the buyer ~~$100~~ $1,000 plus reasonable ~~attorneys'~~ attorney fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered ~~to him~~ by the seller and ~~shall have~~ has a lien on the goods ~~in his possession~~ or control for any recovery to which ~~he~~ the buyer may be entitled."

Section 19. Section 30-14-1403, MCA, is amended to read:

"30-14-1403. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of administration created in 2-15-1001.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this ~~or any other~~ state ~~of the United States~~ or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer."

Section 20. Section 30-14-1404, MCA, is amended to read:

"30-14-1404. Registration of sellers or telemarketers -- application fee -- fines. (1) (a) Unless exempt under 30-14-1405, a person may not ~~act~~ use a telephone to call into or out of Montana as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the

following information:

(i) the true name, current address, telephone number, and location of the seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of the application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(iv) whether there has been entered against any principal or manager an injunction, a temporary restraining order, or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any federal or state consumer protection law. The information must include any pending litigation against the applicant.

(v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(vi) the true name, current home address, date of birth, social security number, and all other names of the following:

(A) each telemarketer or other person to be employed by the seller;

(B) each person participating in or responsible for the management of the seller's business; and

(C) each person, office manager, or supervisor principally responsible for the management of the seller's business;

(vii) the name, address, and account number of every institution where banking or any other monetary transactions are conducted by the seller; and

(viii) a copy of all scripts, outlines, or presentation material that the seller will require a telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(2) (a) The application for registration or renewal must be accompanied by a one-time application fee of $500 and a surety bond in the amount of $50,000. The bond must provide for indemnification to the state of Montana for any person suffering a loss as the result of violation of this part, and the bond must meet any other requirements that the department may establish.

(b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified mail to the applicant and to the department. Unless the bond is replaced by that of another surety before the

expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be treated as lapsed.

(c) The surety bond must remain in effect for 1 year from the period the telemarketing business ceases to operate in this state.

(d) (i) Any business required under this part to file a bond with a registration application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the amount of $50,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for 1 year from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to the state of Montana for all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

(3) The following constitute a violation of this part:

(a) failure to register, maintain, or renew a registration if required;

(b) failure to meet the surety bond requirement if required to provide a bond;

(c) including any false or misleading information on a registration application; and

(d) misrepresenting that a seller or telemarketer is registered.

(4) A violation of subsection (3) ~~of this section~~ also constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 ~~and the Montana Unfair Trade Practices and Consumer Protection Act of 1973~~. If the department prevails in an action brought for a violation of subsection (3), the court shall impose a fine in an amount of not less than $1,000 or more than $10,000 for each day in which a violation has occurred."

Section 21. Section 30-14-1405, MCA, is amended to read:

"30-14-1405. Exemptions from registration and bonding. The registration and bonding requirements of 30-14-1404 do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any

associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;

(3) a business-to-business sale;

~~(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:~~

~~(a) contains a written description or illustration of each item offered for sale;~~

~~(b) includes the business or home address of the person soliciting the sale;~~

~~(c) includes at least 20 pages of written material and illustrations;~~

~~(d) is distributed in more than one state; and~~

~~(e) has a circulation by mailing of not less than 150,000;~~

~~(5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;~~

~~(6)~~(4) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;

~~(7)~~(5) a supervised financial organization ~~or parent, subsidiary, or affiliate of a supervised financial organization~~;

~~(8)~~(6) an insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;

~~(9) a person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;~~

~~(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative or its subsidiary~~

~~or agent, or a federally licensed cellular telephone or radio telecommunication service provider;~~

~~(11) a person soliciting business from consumers that have an existing business relationship with or have previously purchased from the business enterprise for which the person is soliciting;~~

~~(12) a person operating a retail business establishment under the same name as that used in the solicitation and:~~

~~(a) the products or services are displayed and offered for sale at the business establishment; and~~

~~(b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;~~

~~(13)~~(7) a person soliciting for the sale of a ~~magazine or~~ newspaper of general circulation;

~~(14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;~~

~~(15) a book, video, record, or multimedia club, contractual plan, or arrangement:~~

~~(a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;~~

~~(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or~~

~~(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;~~

~~(16)~~(8) a real estate salesperson or broker licensed by this state~~;~~.

~~(17) a person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;~~

~~(18) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.~~"

Section 22. Section 30-14-1406, MCA, is amended to read:

"30-14-1406. Telemarketing ~~fraud~~ and consumer fraud awareness program. The department shall establish and administer a telemarketing ~~fraud~~ and consumer fraud awareness program. The program must be funded as provided in 30-14-1407(2)."

Section 23. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing ~~fraud~~ and consumer fraud awareness program established in ~~30-14-1405~~ 30-14-1406. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing ~~fraud~~ and consumer fraud awareness program similar to the program authorized in ~~30-14-1405~~ 30-14-1406. Any excess civil fines, costs, or fees must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced."

Section 24. Section 30-14-1413, MCA, is amended to read:

"30-14-1413. Civil remedies -- venue -- burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or $500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, the attorney general, or a county attorney, on behalf of state residents who have

suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the district court or justice's court in the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception."

Section 25. Section 61-4-501, MCA, is amended to read:

"**61-4-501. Definitions.** For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning ~~applied to that word~~ provided in 61-4-201.

(5) (a) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state.

(b) The term does not include:

(i) a truck with 10,000 pounds or more gross vehicle weight rating ~~or a motorcycle as defined in 61-1-105~~; or

(ii) ~~Motor vehicle does not include~~ components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer

or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use ~~shall~~ must be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first ~~18,000~~ 30,000 miles of operation, whichever is earlier."

Section 26. Section 61-4-516, MCA, is amended to read:

"61-4-516. ~~Composition of arbitration panel~~ Selection of arbitrator. An ~~arbitration panel hearing~~ arbitrator for a grievance under this part ~~must consist of three members~~ must be chosen by the department of administration. ~~One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties.~~ The department of administration ~~may~~ shall maintain a list of persons willing to serve ~~on panels from which the third member may be chosen~~ as an arbitrator."

Section 27. Section 61-4-518, MCA, is amended to read:

"61-4-518. Arbitration -- role of department of administration -- expert. (1) The department of administration shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of administration may, on behalf of the ~~arbitration panel~~ arbitrator, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the ~~panel~~ arbitrator, the department of administration may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the ~~panel~~ arbitrator. The expert, at the arbitrator's request, may ~~sit as a nonvoting member of the panel~~ be present whenever oral testimony is presented."

Section 28. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by ~~arbitration panel~~ arbitrator -- decision. (1) The ~~arbitration panel~~ arbitrator shall, as expeditiously as possible, but not later than 60 days after the department of administration has accepted a

complaint, render a fair decision based on the information gathered and disclose ~~its~~ the arbitrator's findings and ~~its~~ reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of administration shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

NEW SECTION. **Section 29. Repealer.** Sections 30-14-210, 30-14-211, 30-14-212, 30-14-214, 30-14-215, and 30-14-225, MCA, are repealed.

NEW SECTION. **Section 30. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: HB0127 **Title:** Revise unfair trade and consumer protection act of 1973

Primary Sponsor: Fritz, N **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director 1/10/03 Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
State Special Revenue	($950)	($950)
Revenue:		
State Special Revenue	$15,000	$15,000
Net Impact on General Fund Balance:	$0	$0

☐	Significant Local Gov. Impact	☒	Technical Concerns
☐	Included in the Executive Budget	☐	Significant Long-Term Impacts
☐	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. Passage of this bill will allow the state to bond more telemarketers and charge them for doing so (30 telemarketers at $500 per bond = $15,000).
2. There would be less need to travel because cases could be filed in Lewis and Clark County (savings would be $200 per year in travel). More cases will be worked with the extra time, providing more service to the public.
3. Passage of this bill will allow only one arbitrator in every lemon law case instead of the current three arbitrators. In the past two years there have been an average of five cases per year. Each arbitrator spends an average of one hour per case, paid at $75 per hour. Reducing the number of arbitrators by two would save $750 per year. (2 arbitrators x $75/hr x 1 hour per case x 5 cases per year = $750 per year savings)

HB 127

Fiscal Note Request HB0127, As Introduced
(continued)

FISCAL IMPACT:

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
Operating Expenses	($950)	($950)
Funding of Expenditures:		
State Special (02)	($950)	($950)
Revenues:		
State Special (02)	$15,000	$15,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
State Special (02)	$15,950	$15,950

TECHNICAL NOTES:

1. Within this bill it may be beneficial to amend Section 25 to cover the Lemon Law gap with Washington State to include vehicles registered or purchased in Montana (no fiscal impact). Montana motor vehicle consumer protection law currently only applies to vehicles purchased in the state. Some states, such as Washington, have consumer protection law that only applies to vehicles registered in the state. This results in vulnerability to the consumer if the vehicle is purchased in Washington and registered in Montana.
   The recommended amendment is to Section 25 of this bill, amending 61-4-501, MCA, as follows:
   (5) (a) "Motor vehicle" means a vehicle...sold or registered in this state.

FISCAL NOTE

Bill #: HB0127 **Title:** Revise unfair trade and consumer protection act of 1973

Primary Sponsor: Fritz, N **Status:** As Amended in House Committee

Nancy Ree 3-11-03
Sponsor signature Date

Chuck Swysgood 3/10
Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
State Special Revenue	($950)	($950)
Revenue:		
State Special Revenue	$0	$0
Net Impact on General Fund Balance:	$950	$950

- ☐ Significant Local Gov. Impact
- ☐ Included in the Executive Budget
- ☐ Dedicated Revenue Form Attached
- ☒ Technical Concerns
- ☐ Significant Long-Term Impacts
- ☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. As amended, the state will not be able to bond telemarketers and charge them for doing so, resulting in no increase in revenues.
2. There may be additional revenues to the state as a result of the increase in allowable fines; however, this amount is dependent on the number of cases and the amounts awarded by the courts, so the fiscal impact cannot be predicted.
3. There would be less need to travel because cases could be filed in Lewis and Clark County (savings would be $200 per year in travel). More cases will be worked with the extra time, providing more service to the public.
4. Passage of this bill will allow only one arbitrator in every lemon law case instead of the current three arbitrators. In the past two years there have been an average of five cases per year. Each arbitrator spends an average of one hour per case, paid at $75 per hour. Reducing the number of arbitrators by two would save $750 per year. (2 arbitrators x $75/hr x 1 hour per case x 5 cases per year = $750 per year savings.)

HB127 #2

Fiscal Note Request HB0127, As Amended in House Committee
(continued)

FISCAL IMPACT:

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
Operating Expenses	($950)	($950)
Funding of Expenditures:		
State Special (02)	($950)	($950)
Revenues:		
State Special (02)	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
State Special (02)	$950	$950

TECHNICAL NOTES:

1. This bill will need to be coordinated with HB 571, which, if passed, would move the Consumer Protection Agency to the Department of Justice.

FISCAL NOTE

Bill #: HB0127 **Title:** Revise unfair trade and consumer protection act of 1973

Primary Sponsor: Fritz, N **Status:** As Amended second time in House Committee

Sponsor signature Date Chuck Swysgood, Budget Director 3/24/10 Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
State Special Revenue	($950)	($950)
Revenue:		
State Special Revenue	$0	$0
Net Impact on General Fund Balance:	$950	$950

☐ Significant Local Gov. Impact	☒ Technical Concerns
☐ Included in the Executive Budget	☐ Significant Long-Term Impacts
☐ Dedicated Revenue Form Attached	☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. As amended the second time, there is no change in fiscal impact as compared to the first amendments.
2. As amended the first time, the state will not be able to bond telemarketers and charge them for doing so, resulting in no increase in revenues.
3. There may be additional revenues to the state as a result of the increase in allowable fines; however, this amount is dependent on the number of cases and the amounts awarded by the courts, so the fiscal impact cannot be predicted.
4. There would be less need to travel because cases could be filed in Lewis and Clark County (savings would be $200 per year in travel). More cases will be worked with the extra time, providing more service to the public.
5. Passage of this bill will allow only one arbitrator in every lemon law case instead of the current three arbitrators. In the past two years there have been an average of five cases per year. Each arbitrator spends an average of one hour per case, paid at $75 per hour. Reducing the number of arbitrators by two would save $750 per year. (2 arbitrators x $75/hr x 1 hour per case x 5 cases per year = $750 per year savings.)

HB 127 #3

FISCAL IMPACT:

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
Operating Expenses	($950)	($950)
Funding of Expenditures:		
State Special (02)	($950)	($950)
Revenues:		
State Special (02)	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
State Special (02)	$950	$950

TECHNICAL NOTES:

1. This bill will need to be coordinated with HB 571, which, if passed, would move the Consumer Protection Agency to the Department of Justice.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 13, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 179; HB 162; HB 230; HB 127; HB 183
Executive Action: HB 79; HB 179; HB 162 withdrew motion until later date

CHAIRMAN McKENNEY asked Mr. Andrew who referred the question to **Mr. Campbell** to answer a clarification question. Mr. Campbell said in subsection 1 it seems to indicate in line 20 they may not withhold from any employee any wages earned or unpaid for a period of longer than 10 business days. He asked if this bill would mean that they must pay within 10 business days unless they are allowed to use the new subsection 3 that would say the employer could pay within the next ensuing pay period. **Mr. Andrew** said the new 10 business day provision is still in there and there would be the special exception to that. This would be the trigger in the event the employee did fail to turn in their time card.
{Tape: 2; Side: A; Approx. Time Counter: 16 - 44}

Closing by Sponsor:

The Sponsor closed.

HEARING ON HB 127

Opening Statement by Sponsor:

REP. NANCY RICE FRITZ, HD 69, Missoula, stated the Montana Unfair Trade Practice Consumer Protection Act of 1973 has helped the consumers and businesses for the last 30 years. While the law still works beautifully, some of the fine amounts and concepts need touching up. This bill will clarify this.
{Tape: 2; Side: A; Approx. Time Counter: 45 - 77}

Proponents' Testimony:

Cort Jensen, Consumer Protection Office, Department of Administration, said the penalties are a little bit behind the times. The private rights of action need to be slightly expanded.
EXHIBIT(buh06a03)
{Tape: 2; Side: A; Approx. Time Counter: 77 - 248}

Sam Sperry, AARP, said this bill addresses a number of issues that are raised in their membership survey; they are willing to work with members of the committee and the department.
EXHIBIT(buh06a04)
{Tape: 2; Side: A; Approx. Time Counter: 224 - 319}

Opponents' Testimony:

Dwight East, Farmers Insurance Group Companies, said they arose in opposition in a qualified manner. The only item of this bill they have concerns with is the repealer in section 29. The Auditor's Office has some concerns about it also. There was an opportunity to offer an amendment which would re-codify to some degree. Leave this protection in for all Montanans. If one person is able to get rebates, somewhere along the line, that price is passed along in the form of higher glass bills.
{Tape: 2; Side: A; Approx. Time Counter: 319 - 367}

Mona Jamison, General Motors, said she had a qualified opposition to this bill. There are many different statutes that are being amended. Certain sections need to be clarified.
{Tape: 2; Side: A; Approx. Time Counter: 368 - 469}

Steve Turkiewicz, Montana Auto Dealers Association, stated he thought the provisions on the new car lemon law and changes them are a concern. They think this is a very important change in Montana law and needs more looking into. The amendment brought forward is something that they think is a positive aspect of the bill.
{Tape: 2; Side: A; Approx. Time Counter: 469 - Tape: 2; Side: B; Approx. Time Counter: 16}

Webb Brown, Montana Chamber of Commerce, said trouble damages and civil action are an important factor but the inclusion of the proposed amendments would make good legislation.
{Tape: 2; Side: B; Approx. Time Counter: 16 - 26}

Riley Johnson, National Federation of Businesses, said their members are very small businesses. This bill has so many questions in it. Trying to revise or edit out some of the good and keeping some of the bad is going to be difficult. In that case they rise in opposition to this bill. Some of the consumer protection laws should be considered.
{Tape: 2; Side: B; Approx. Time Counter: 26 - 73}

Ross Cannon, Direct Marketing Association, (which is the National Trade Association) said this bill had "a lot of sweeping changes in it." He said his industry tries to be reasonable but as this bill stands they will not take a position on either of them. They thought it would have been far better had the department called the together the affected interests and discussed these matters by hearing the industry's side of things. He also thought this bill should be sent out on an interim study or kill it here.
{Tape: 2; Side: B; Approx. Time Counter: 73 - 156}

Greg Van Horssen, State Farm Insurance Company, said they had a concern about the repeal in section 29. This a section of the law prohibits glass shops from faulty billing of a claim. This section needs to stay someplace in the law where regulators has authority over that business.
{Tape: 2; Side: B; Approx. Time Counter: 156 - 200}

John Cadby, Montana Banker's Association, said sections of this bill should be restored into their original wording. He urged the committee to remove the telemarketing sections completely since there are other bills regarding this matter.
{Tape: 2; Side: B; Approx. Time Counter: 200 - 240}

Informational Testimony:

Angela Huschka, Deputy Insurance Commissioner, State Auditor's Office said she was providing testimony for her department regarding regulation of the auto glass dealers.
{Tape: 2; Side: B; Approx. Time Counter: 240 - 257}

Questions from Committee Members and Responses:

REP. GALLIK asked **Mr. Jensen** what his thinking on the repealer was on the glass provision. He said it was not that he opposed having this in the law, it should just work and possibly be put into another section of the law. When there are laws like that they can't be enforced.
{Tape: 2; Side: B; Approx. Time Counter: 257 - 308}

REP. KEANE stated to **Mr. Jensen** that this bill had significant problem and questioned the consensus of the bill. He said he was the only lawyer in his office. He said he was aware of many of the objections to the bill as it was being drafted.
{Tape: 2; Side: B; Approx. Time Counter: 308 - 363}

REP. MATTHEWS asked Mr. Jensen if this is a bill that could be referred to an interim committee and **Mr. Jensen** agreed.

Closing By Sponsor:

The Sponsor closes.

CHAIRMAN McKENNEY requested **HB 130** be placed into a sub-committee with **REP. BITNEY** to chair and **REPS. MATTHEWS** and **MENDENHALL** also contact the interested persons. A report back to the committee is requested for Tuesday, January 21, 2003.

DEPARTMENT OF ADMINISTRATION

CONSUMER PROTECTION OFFICE

EXHIBIT 3
DATE 1-13-03
HB 127

JUDY MARTZ, GOVERNOR

STATE OF MONTANA

(406) 444-4500

PO BOX 200501
HELENA, MONTANA 59620-0501

Dear Member of the Committee on Business and Labor,

My name is Cort Jensen. I am the attorney for the Montana Office of Consumer Protection (which used to be called Consumer Affairs). My Office is part of the Department of Administration. It is my job to enforce the Unfair Trade Practices and Consumer Protection Act of 1973 and the New Vehicle Warranty Act.

My office is small (5 investigators and myself). We only go after the worst offenders. I wanted to provide you with a summery of this bill. The summery is attached. I also wanted to talk to you about why the changes are necessary. I am also providing a glossary of common consumer protection terms.

Having studied the Consumer Protection Codes of all 50 other states, I can honestly state our law is the best written. It is for the most part easy to understand and to enforce, with the exception of unfair trade portion. The need for changes could be summed up as follows

The penalties are a little bit behind the times.
The private rights of action need to be slightly expanded.
Protections for small businesses need to be added.
Unfair Trade (anti-trust) act needs to be made enforceable.
Telemarketing laws needed to be tightened up.
A slight expansion of the Lemon Law is advisable.
I also tried to find changes that would lower my office's budget needs.

We fully support Senator Fritz's amendment as well. It fixes a small gap that was never intended to exist.

Cort Jensen
1219 8th Ave
Helena, MT 59601
(406) 444-5439

"AN EQUAL OPPORTUNITY EMPLOYER"

GLOSSARY OF CONUMER PROTECTION

Below Cost Sale- Intentionally selling an item below the cost needed to get acquire, transport, and sell the item. It is a violation of Montana law if this type of sale is done to drive smaller competitors out of business.

Business-to-Business- A sale between two businesses (as opposed to a consumer transaction).

Consumer Affairs- The name for the Consumer Protection Office when it was under the Department of Commerce.

Consumer Protection Office- A part of Department of Administration in charge of preventing violations of the Unfair Trade Practices and Consumer Protection Act of 1973 and New Vehicle Warranty Act. It used to be called Consumer Affairs.

Do-Not-Call List- A list of phone numbers that telemarketers are forbidden from calling.

FTC- Federal Trade Commission investigates all business transactions that cross state lines. They investigate large scale UDAP violations only. They are in charge of the new National Do-Not-Call List

FCC- They regulate all communications (phones, faxes) and transmitting devices (radio, TV).

Lemon Law- The common name of the New Vehicle Warranty Act There is a wheelchair lemon law as well.

New Vehicle Warranty Act- Requires a vehicles manufacture to buy back a new vehicle that requires a 4 or more repairs of the same type in the first 2 years or 12,000 miles.

Personal Solicitations Act- This Law regulates door-to-door sales. It requires a three day right of recession (an ability to send the good back for any reason).

UDAP- Unfair and Deceptive Acts and Practices. Often spoken as a word not an acronym.

Unfair and Deceptive Acts and Practices- This refers to the laws that regulate deceptive advertising and abusive business practices. In Montana, this would be Unfair Trade Practices and Consumer Protection Act of 1973.

Unfair Trade Practices- What is commonly called state antitrust law. Any attempt to destroy fair competition; usually involves inference with anothers contracts, price-fixing, or Below Cost Sales.

Unfair Trade Practices and Consumer Protection Act of 1973- MCA 30-14- The Montana UDAP. It is a series of laws that protect consumers and small businesses form false advertising, abusive sales tactics, antitrust, door-to-door sales, and defective products. The Consumer Protection Office enforces the act.

HB 127 Section By Section

Consumer Protection (slight wording changes in all sections to modernize and..)

Section 1 Adds a definition for Consumer and removes the definition for National Advertising.

Section 2 Exempts industries already regulated by the Auditor. Removes the element of financial gain from the newspaper exemption. Removes the national advertising exemption.

Section 3 Allows all consumer protection cases to be filled in Lewis and Clark County. Allows judges to require a bond when they enter a consumer protection injunction on a business.

Section 4 Allows the state to collect attorney's fees and costs if they win a consumer protection case. Allows a judge to take whatever actions equity (fairness) requires to address a consumer protection violation.

Section 5 Allows a consumer to bring a private action (or class action) in district court. Allows a consumer to bring an action in justice court. Makes the minimum award to the consumer 500 dollars. Requires the judge to award treble damages absent an honest mistake by the business.

Section 6 Clarifies which penalties apply to different actions. Clarifies which penalties are in addition to other penalties. Increases the penalties.

Unfair Trade (Antitrust) (slight wording changes in all sections to modernize and..)

Section 7 Exempts industries regulated by the auditor.

Section 8 Removes references to cost surveys in Below Cost Sales cases.

Section 9 Removes references to cost surveys in Below Cost Sales cases

Section 10 Changes the Departments role in Unfair trade from a duty prosecute to an option to prosecute. Changes the time deadlines and mailing requirements in an investigation. Increases the penalty for an Unfair Trade Act.

Section 11 Clarifies that the Department can bring an injunctive action. Allows a private party to get a 500-dollar per day of violation statutory damages amount for below cost sales. Lets the state collect attorney's fees for prevailing in antitrust cases. Lets prevailing parties collect attorney's fees in private antitrust case.

Section 12 Lets the Department permanently enjoin a business with out waiting for the third violation of antitrust law.

Section 13 Changes the fine for a conviction in a criminal antitrust case. Convictions are now felonies.

Personal Solicitation Act- (Door-to-Door Sales)

Section 14 Changes the purpose of the act so that it also apply to certain business-to-business transactions

Section 15 Allows business-to-business transactions under 5000 dollars to be covered by the act

Section 16 Makes the failure to provide required disclosures a violation of the consumer protection act

Section 17 Makes the "right to cancel" not start until after the seller has given the buyer a way to contact them.

Section 18 Increases the penalty to $1000 dollars for violating this section

Telemarketing (slight wording changes in all sections to modernize and..)

Section 19 Makes regulated finical intuitions those that are regulated by Montana or the Federal Government

Section 20 Establishes a fee to process the bond ($500). Requires the bond to meet all other State requirements for bonds. Increases the penalty for failure to bond.

Section 21 Removes Several exemptions to the bonding law. (Having a Catalog, Repair agencies, Bank subsidiaries, Cable TV, Radio, Satellite, Phone Companies, Pre-existing Relationship, Retail Business of the Same Name, Magazines, Book Clubs, Video Clubs, Telemarketers, Food Sellers)

Section 22 Allows money obtained by working a Telemarketing case to be used for General Consumer Protection Education. (In addition to Telemarketing Education which is already allowed)

Section 23 Allows money obtained by working a Telemarketing case to be used for General Consumer Protection Education. (In addition to Telemarketing Education which is already allowed)

Section 24 Allows low dollar amount cases to be brought in Justice Court

New Vehicle Warranty Act (Lemon Law)

Section 25 Adds motorcycles to covered vehicles. Increase the coverage from 18,000 to 30,000 during the first two years. (This is the section that needs to be amended to cover the gap of vehicles that are bought in a "registration" lemon law state)

Section 26 Allows one arbitrator picked by the Department rather then a panel.

Section 27 Allows one arbitrator picked by the Department rather then a panel.

Section 28 Allows one arbitrator picked by the Department rather then a panel.

Section 29 (Unfair Trade) Repeals the requirements to conduct Cost Surveys and the Rebate Prohibition. Removes the Auto Glass Law (a prohibition on rebates in an auto glass replacement transaction).

Section 30 Makes the law apply on Passage.

AARP Montana

EXHIBIT 4
DATE 1-13-04
HB 127

January 13, 2003

Joe McKenney, Chair
House Business and Labor Committee
Montana's 58th Legislative Assembly

Support HB 127

Mr. Chairman and members of the Business and Labor Committee. For the record my name is Sam Sperry, and I am a volunteer with the AARP Montana Capital City Task Force.

As you know, AARP Montana is a non-profit, non-partisan membership organization for people 50 and older with more than 136,000 Montana members in Montana and 35+ million members across the country.

The 2002 AARP Montana Consumer Fraud Survey of our members revealed 39% say they believe they have been the victim of consumer swindle or fraud. This is almost double the response to a similar question in a national survey where 21% said they have been a victim of a major swindle or fraud. At least one-third of Montana members say they have been victims of an auto related (33%) or telephone (31%) fraud or swindle. About a quarter (24%) have been a victim of credit card fraud, and nearly one in five say they have been a victim in the areas of insurance products (19%), home repair (19%) or charities and donations (18%).

Our members report that many of the examples of consumer swindles are at the hands of industries they believe are unregulated by consumer protections. We wanted to voice our concerns for the Montana consumer and to support efforts from the Montana Department of Administration in revising the Montana Consumer Protection Act of 1973.

A troubling result of the survey was that only 16% of those who believe they've been victimized reported it to a government official, and only 14% reported it to a government agency. We believe we need stronger consumer protection, and AARP Montana will do its part to publicize the options that our citizens have in dealing with fraud and swindle.

We believe HB 127 addresses a number of issues that are raised in our Membership Survey and we are willing to work with members of the House Business and Labor Committee, the Montana Department of Administration and Representative Nancy Rice Fritz to address these serious issues.

Thank you for allowing us the opportunity to testify today and we look forward to working with each of you during the session as a "voice of the consumer". Our Associate Director for Advocacy, Pat Callbeck Harper, will be available along with members of the Capital City Task Force during the session

C: Representative Nancy Rice Fritz; Cort Jensen, Department of Administration

1325 Euclid Avenue, Suite 2 | Helena, MT 59601 | 406-441-2277 | 406-441-2230 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

HOUSE OF REPRESENTATIVES
Roll Call ✓
BUSINESS AND LABOR COMMITTEE

DATE 1-13-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date 1-13-03

Bill No. HB 127 Sponsor(s)_____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
DA Smith	DA	✓		
Brenda Olson	Rocky Mtn Captive ~~Ins Assoc of MT~~	✓		
SAM SPERRY	AARP Montana	✓		
Mona M. Cannon	OMG		✓	
Steve Turkiewicz	MT Auto Dealers Assn		✓	
[illegible] Jones	CPC	✓		
~~[illegible]~~				
Mona Jamison	GM		✓	
Ed Callwell Haigen	HARP MT	✓		
Ray Martin	Farmers Ins Group		✓	
Greg [illegible] Hesse	State Farm		✓	
Dave Pengelli	Blue Cross BCBST Health Services		✓	
Vicki Brown	MT TAIA Chamber		✓	
Angela Huseman	~~Farmers~~ State Auditors office			✓
Riley Johnson	NFIB		✓	~~✓~~
Brad Griffin	MT Retail Assoc		✓	
J. [illegible] Addy	MT Farmers Assoc		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 17, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB285
Executive Action: HB 164; HJR 9; HB 145; HB 126; HB 163; HB 127

Hal Manson, American Legion of Montana and the **Reserve Officers Association,** said the country needs young people. He also spoke on the absentee ballot for service men and women during elections.
{Tape: 2; Side: A; Approx. Time Counter: 406 - 448}

Kevin Brun, Professional and Occupational Licensing, Department of Labor, said they support this bill.
{Tape: 2; Side: A; Approx. Time Counter: 448 - 459}

Opponents' Testimony:

Bob Vogel, Montana School Boards Association, said he did have a minor concern with the bill. Parents may opt out of the contact with military recruiters for their students.
{Tape: 2; Side: A; Approx. Time Counter: 459 - 489}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. GALVIN-HALCRO asked **REP. BROWN** if this were a trust me bill and the outcome of the previous legislation regarding this same proposal. **REP. BROWN** said this legislation does not change that portion of the law.
Tape: 2; Side: A; Approx. Time Counter: 490 - Tape: Side: B; Approx. Time Counter: 55 Comments: This tape was stopped at 55)

Closing by Sponsor:

Sponsor closed.
{Tape: 3; Side: A; Approx. Time Counter: 56 - 137}

EXECUTIVE ACTION ON HB 127

{Tape: 3; Side: A; Approx. Time Counter: 138 - 500}

Motion: **REP. FRITZ** moved **HB 127 DO PASS.**

Motion: **REP. GALLIK** moved **HB 127 AMENDMENTS.**

Discussion:

Mr. Campbell explained the amendments.

Motion: **REP. MENDENHALL** moved **CONCEPTUAL AMENDMENT.**

Vote: Motion failed 8-10 on the Mendenhall amendment with REPS. KEANE, MORGAN, FRITZ, BERGREN, GALVIN-HALCRO, WILSON, WEISS, MATTHEWS voting yes.

Discussion:

REP. HAWK questioned the motorcycle language in the bill. **Mr. Campbell** said by striking the words "motor cycle" as defined as part of the motor vehicle, it would be subject to the two year warranty and 18,000 mile provision. **REP. HAWK** then said motor-cycles should not be under the warranty period. This was affirmed.

REP. KEANE said motor-cycles do belong in the law as motor vehicles and this bill indicates they have a two year warranty.

REP. MORGAN asked what the manufacture warranty was on a motor-cycle. **REP. MENDENHALL** said he did not know. **REP. MORGAN** then said

Mr. Campbell said not to be confused with your warranty which is received upon purchase of a car and the lemon law. Two years of warranty are given from the manufacturer. The lemon law allows that within the two year period, on a new vehicle, if you have a certain number of problems with the vehicle, there is a way to return the vehicle to the dealership. **REP. MORGAN** said the question of mileage is a non-issue.

Motion: **REP. MENDENHALL** made a motion to **WITHDRAW HIS AMENDMENT.**

Discussion:

REP. BITNEY suggested a no vote on this bill.

CHAIRMAN McKENNEY said there is probably more in this bill that would be confusing. There are questions in this bill that are unanswered and said he was voting no.

REP. GALLIK said he was going to support the bill.

Motion/Vote: **REP. FRITZ** moved **HB 127 DO PASS AS AMENDED. A roll call vote was taken passing 10-8 with REPS. McKENNEY, STEINBEISSER, BITNEY, HAWK, LAWSON, MAEDJE, MENDENHALL** and **ROME voting no.**

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 1-17-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 1-17-03 BILL NO HB 127 MOTION NO. _____
MOTION: Do Pass As Amend

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.		✓	
REP. DON STEINBEISSER, VICE CHAIR MAJORITY		✓	
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY		✓	
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK		✓	
REP. BOB LAWSON		✓	
REP. RICK MAEDJE		✓	
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL		✓	
REP. PENNY MORGAN	✓		
REP. ALLEN ROME		✓	
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		
	10	8	

/s/Bus&LaborRollCallVote.2003

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 14, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Brent R. Cromley (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 127, 3/5/2003; HB 578, 3/5/2003; HB 618, 3/5/2003
Executive Action:	HB 197; HB 578; HB 211; HB 222; HB 224; HB 350; HB 402; HB 478

EXECUTIVE ACTION ON HB 224

Motion: **SEN. O'NEIL** moved **DO CONCUR** on **HB 224.**

Discussion:

SEN. McGEE stated he is very concerned about what the Supreme Court may be trying to do, but he has discussed the matter with representatives of the Montana Association of Counties (MACO) and they are in agreement with HB 224 since the language utilizes "may."

CHAIRMAN GRIMES remembered there was a suggestion for an amendment on line 24 saying it would be reviewed and the court may assume costs later on. **CHAIRMAN GRIMES** thinks that amendment is unnecessary since it will happen anyway.

SEN. WHEAT suggested including a sunset on the bill. This will allow time to determine how it is working.

CHAIRMAN GRIMES warned the Code Commissioner is frowning on the use of sunsets provisions.

Vote: **SEN. O'NEIL's** motion to **DO CONCUR** on **HB 224 carried with Sen. Wheat voting no** and **Sen. Cromley voting no by proxy. SEN. O'NEIL** will carry the bill on the Senate floor.

(Tape : 2; Side : A)

HEARING ON HB 127

Sponsor: **Rep. Nancy Rice Fritz, HD 69, Missoula.**

Proponents: **Cort Jensen, Montana Office of Consumer Protection**

Opponents: **None.**

Opening Statement by Sponsor:

Rep. Fritz opened the Montana Unfair Trade Practice and Consumer Protection Act of 1973 has helped the consumers and businesses of Montana for the last 30 years. While the law still works beautifully, some of the penalties, language, and concepts needed touching up. This bill will clarify and revitalize the law, bringing it up to date and up to speed for the year 2003 and beyond.

Proponents' Testimony:

Cort Jensen, attorney for the Montana Office of Consumer Protection, stated the goal originally had five major points, two of which were amended out because telemarketing was addressed by another bill, and the lemon law had its own bill. The three remaining areas include general expansion of the Consumer Protection Law, revisions to the Unfair Trade Act, which is Montana's state-based antitrust law, and to the Personal Solicitation Act, which is the door-to-door act. The bill will apply to door-to-door transactions that occur to small businesses, as long as the transaction is under $5,000.

The bill provides a definition of the word "consumer" and does away with the definition of "national advertising," which was based on 1970 standard where states could not regulate national advertising.

The second section of the bill will clarify that the State Auditor's Office has jurisdiction over insurance and securities law. Under current law, some businesses were doubly regulated by two different sets of consumer protection codes and two different sets of anti-trust codes. This was causing conflict and loss of clarity between two offices.

The bill will require newspaper publishers to be responsible for the ads they run, if they know those ads are fraudulent. In the past, newspapers not only had to know the ads were fraudulent, but personally benefit from the fraud.

The bill also provides for injunction hearings before a judge to be held in Lewis and Clark County. Since **Mr. Jensen** is the only attorney for the office, and cases have to be brought in the county where the business is primarily located. The farther away from Helena you are, the less likely to get the injunction. Therefore, Helena businesses are disproportionately affected, while businesses and individuals in eastern Montana have less protection since it is hard to justify the expense of travel. The investigation would still occur in the county where the business is located.

When a private case under consumer protection law is brought, the judge can restore fairness and compensate the consumer. However, when the state brings a like case, the judge does not have that discretion. HB 127 will allow the judge to have that same discretion as in private cases.

The bill will also allow a consumer to bring a case in justice court, as well as district court. Because the filing fees were

so high in district court, they were often higher than a potential award. If the amount falls within the limits of justice court, a person would be able to file an action in that venue.

Penalties would be increased for intentional and fraudulent portions of consumer protection law. Ms. Jensen explained there are three times a person can get fined for consumer protection violation. One is if his office has entered an injunction approved by a judge. The other two times are when an act has been done willfully and knowingly. The current fines were below federal standards so was increased to match federal standards and fines in neighboring states. The Unfair Trade Act is Montana state antitrust law, which is when businesses attempt to defeat free enterprise by lying about prices and predatory pricing below cost, and interfering with a contract of another business are all examples of antitrust law violations. Under the current law, all the duties under the Consumer Protection Act were discretionary, but the duties under the Unfair Trade Act were mandatory. Therefore, resources were disproportionate between Unfair Trade Act violations and Consumer Protection Act violations. The law also had archaic language which was removed. Current law required a cost survey to be performed if ten people requested it. However, there was not enough staffing to accomplish this. The original intent was that there would be a public hearing prior to a cost survey being performed. HB 127 will reflect that original intent and require a public hearing. After the hearing, it will be decided whether to perform the cost survey. There is a prohibition on unearned rebates and it is not clear what was meant by the law. As far as he can tell, **Mr. Jensen** believes it was supposed to be an anti-kickback provision. Because the clause uses legal language from the 1930s, it reads to be a ban on all rebates.

The Personal Solicitation Act, also known as the door-to-door sales act, contained in Sections 14 through 20 of HB 127, has worked amazing well in Montana. The fastest growing problem in Montana is fraud against small businesses. Small businesses do not have the protection under door-to-door solicitation which a general consumer does. If the transaction is done door-to-door and is under $5,000, businesses will now have the same rights and protections as normal consumers. Those rights will include the name of the business selling the product, contact information, and a three-day right to return the goods in their original state. Often times an employee will be contacted by telephone and asked if they would like to reorder toner, copy paper, or degreaser. The employee, thinking they are speaking with a business which their employer has a long-term business relationship with, reorders. When the product arrives, the business is billed an amount way in excess of what the products

would normally sell for. The only option a business currently has is to file a full-blown lawsuit, often in a different jurisdiction.

The telemarketing provisions and the lemon law provisions have been amended out, since they were addressed in other bills.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL inquired if the bill would provide for injunctive relief in justice court.

Mr. Jensen stated an injunction is sought by a state office, and they still have to go to district court. He did not believe a private right of action would normally have injunctive relief. In Section 5, the bill provides for private right of action in monetary damages and equitable relief. He is not sure it would provide for full injunctive relief.

SEN. PERRY noted page 4, Section 4, it appears that state attorney fees and costs were stricken in lines 22 and 23 and not changed in the title.

Mr. Jensen stated it appears the title did not reflect the change and should be changed.

SEN. PERRY noticed the language in Section 5, page 5, lines 10 and 11 and asked if the state prevails then the state is covered and would be able to retrieve reasonable attorney fees.

Mr. Jensen responded that was correct. The reason the state normally does not prevail under that part is because it usually does not bring the cases under 30-14-133. Most of the time brings the action for injunctive relief under a different section and that section does not provide for attorney fees.

SEN. WHEAT reads Section 5 as providing a remedy for a consumer to bring an individual action. All the sections that flow after that refer to the individual who brings the claim. The only what the state can recover attorney fees under section 5 would be if it, in fact, is the consumer.

Mr. Jensen stated that would be true, although there are other sections of Montana law that list this section as the section the state is supposed to bring the claim under.

SEN. WHEAT felt this was inconsistent because the state would be bringing a claim on behalf of the individual consumer.

Mr. Jensen agreed with **SEN. WHEAT's** analysis.

Closing by Sponsor:

Rep. Fritz closed the hearing on HB 127.

HEARING ON HB 618

Sponsor: **Rep. Sue Dickenson, HD 47, Great Falls.**

Proponents: **Sen. Mike Cooney, SD 26, Executive Director of Healthy Mothers, Healthy Babies**
Al Recht, Cascade County DUI Task Force
Dan Smrdel, Cascade County Deputy
Virginia Caplette, Gallatin County DUI Task Force

Opponents: **None.**

Opening Statement by Sponsor:

Rep. Dickenson explained HB 618 will double the driver's license reinstatement fee for an arrest of driving under the influence of alcohol or drugs, vehicular assault, or other vehicular crimes. This will raise the reinstatement fee from $100 to $200. This bill is about keeping local DUI Task Forces up and operating and doing the good work they have done for the last six years. Fifty percent of the reinstatement fee goes to the local DUI prevention programs. **Rep. Dickenson** explained that DUI Task Forces are groups of local citizens who ban together and put together plans to take care of the DUI problem. This plan is submitted to the County Commission for approval and submitted to the Governor. The plan contains a budget, financial report, and an annual report to the County Commission. There are currently 21 DUI Task Forces in 23 counties in Montana. These Task Forces educate and promote safe options to drinking and driving. They also assist law enforcement in keeping the roads and streets safe in their community. DUI Task Forces work in conjunction with other community programs. DUI Task Forces have only local strings and are tailored to fit each community. **Rep. Dickenson** explained if a person is arrested for DUI and refuses to take a blood or breath test, they have to forfeit their license. Under present law, a person must pay a $100 reinstatement fee, 50 percent of which must be appropriated to county drinking and driving prevention programs. **Rep. Dickenson** read from a letter received from Dave Galt, Director of the Department of Transportation, explaining no funding was received for 2003 biennium and there is

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-14-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY		✓	
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE March 14-2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 127 - HB 578 - HB 618

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Dan Smodel	454-6853	Cascade County Sheriff's Office	HB618	✓	
Robert Throssell	459 6865	MT Magistrates Assoc	HB578	✓	
Julie Ogata	431-3499	MADD	HB618	X	
Beth Satre	443-7794	MT Coalition Against Domestic & Sexual Violence	HB578		info
Virginia Collette	585-1492	Cascade Co DUI Task Force	HB618		
Catrin Collette	586-5286		HB618		
Ali Bovingdon	444-5876	Dept. of Justice	HB578	✓	
Jim Smith		County Attys	HB578	✓	
JIM KEMBEL	442-8684	MACOP MT ASSOCIATION OF CHIEFS OF POLICE	HB578	✓	
Kristi Blaz	442-7450	MT Baptist Ch.	HB578	X	
JIM KEMBEL	442-8684	Self	HB578	X	
Charles Brooks	698-2380	MT Transportation Inc	—	—	—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 17, 2003 at 10 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 220, HB 246, HB 284, 3/5/2003
Executive Action: HB 246, HB 127

SEN. O'NEIL believed the bill would provide that everyone given a Miranda warning would have a right to a state-appointed attorney if they were unable to hire their own attorney. This would place into stone the Miranda warning requirements. He expects the Supreme Court to back off to a reasonable degree in regard to Miranda warning requirements. If a person has received a Miranda warning on five previous occasions and has been in prison, giving the Miranda warning for the sixth time may not be necessary.

SEN. WHEAT pointed out the bill was supported by **Mr. Connor** who represents the Department of Justice, by **Officer Bill Dove** who represents the Police Protective Association, and by **Jim Kembel** who represents the Chiefs of Police. This bill has the support of law enforcement. They are the ones who carry out the Miranda warnings. He did not see anything wrong with the bill. Trying to anticipate future decisions of the U.S. Supreme Court, is not the right way to go. The law enforcement community is in favor of the bill and it should be passed.

Vote: Motion carried on roll call vote 6-2 with CROMLEY and O'NEIL voting no.

EXECUTIVE ACTION ON HB 127

Motion: **SEN. CROMLEY** moved that **HB 127 BE CONCURRED IN.**

Substitute Motion: **SEN. O'NEIL** moved that **HB 127 BE AMENDED, HB012702.avl, EXHIBIT(jus56a07).**

Discussion:

SEN. O'NEIL explained his amendment. If a person was not able to obtain an attorney and represented themselves, they should be allowed to receive compensation for the time taken to study the case and the law.

Vote: The motion carried with CROMLEY voting no.

Substitute Motion: **SEN. MCGEE** moved that **HB 127 BE AMENDED, HB012701.avl, EXHIBIT(jus56a08).**

Discussion:

Ms. Lane noted the amendments were coordination instruction amendments. This bill amends three sections of law that are also amended in HB 571. Instruction 2 incorporates part of the amendments in HB 571 to 30-14-133.

Vote: The motion carried unanimously.

Substitute Motion: **SEN. MCGEE** moved that **HB 127 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. AUBYN CURTISS commented the fiscal note stated it may be beneficial to amend Section 25 to cover the lemon law gap with Washington State to include vehicles registered or purchased in Montana.

Ms. Lane clarified that section had been removed from the bill and would no longer apply in the amended version.

SEN. PERRY believed the opportunity for a prevailing party to win attorneys fees had been taken out.

Ms. Lane explained Instruction no. 2 would replace Section 5 of the bill. Subsections 3 and 4 are out of HB 571. Subsection 3 applies to the plaintiff who brings the action. Subsection 4 provides reasonable attorney fees incurred by a defendant in defending the action.

SEN. MCGEE noted the court would only award attorneys fees to the defendant under Subsection (4) if the court determined the action filed was brought in bad faith.

SEN. PERRY claimed that would be almost impossible to prove and therefore would be almost moot.

Ms. Lane clarified the amendment was simply a coordination instruction that states if both bills pass, this is how the section will read. The problem was that (1) in both bills had different amendments. It could not be codified in that condition. Subsections (3) and (4) did not conflict but they are both in HB 571.

{Tape: 3; Side: A}

Ms. Lane stated the amendments were one suggested way to handle the conflict between the two sections. The amendment could be drafted to only address (1). Subsections (3) and (4) would fall on their own merits in HB 571. If HB 571 did not pass, (3) and (4) would not be amended. If both bills passed, it would be necessary to address the conflict.

Substitute Motion: **SEN. PERRY** moved that **HB 127 BE AMENDED.**

Discussion:

SEN. PERRY explained his amendment would remove paragraph 2 and subsequent paragraphs from the previous amendment.

Vote: The motion carried unanimously.

Substitute Motion/Vote: **SEN. MCGEE** moved that **HB 127 BE CONCURRED IN AS AMENDED. The motion carried with MCGEE and CROMLEY voting no.**

Amendments to House Bill No. 127
3rd Reading Copy

Requested by Senator Jerry O'Neil

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 17, 2003 (9:04am)

1. Page 5, line 11.
Following: "action."
Insert: "A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion."

- END -

SENATE JUDICIARY
Exhibit No. 7
Date 3-17-03
Bill No. HB127

Amendments to House Bill No. 127
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 17, 2003 (9:13am)

1. Page 4, line 15.
Following: "court orders"
Strike: "-- state attorney fees and costs"

2. Page 23, line 20.
Following: line 19
Insert: "NEW SECTION. **Section 18. Coordination instruction.** (1) If House Bill No. 571 and [this act] are both passed and approved, then [section 4] of House Bill No. 571 is void and [section 5 of this act], amending 30-14-133, is amended to read:

"Section 5. Section 30-14-133, MCA, is amended to read:

"30-14-133. Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence. (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his~~ its principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim may be brought in justice's court. The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section~~, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ the judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, if the court determines that the plaintiff suffered actual damages as a result of an unlawful method, act, or practice, the court ~~may~~ shall award the ~~prevailing party~~ plaintiff reasonable attorney fees incurred in ~~prosecuting~~ bringing ~~or defending~~ the action.

(4) If the court determines that an action filed pursuant to this section was brought in bad faith, the court may award the prevailing party reasonable attorney fees incurred in defending the action.

~~(4)~~(5) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ is prima facie evidence in an action brought under this section that the respondent used or

SENATE JUDICIARY
Exhibit 8
Date 3-17-03
Bill No. H B127
HB012701.avl

employed a method, act, or practice declared unlawful by 30-14-103."
{*Internal References to 30-14-133: None.*}"

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void."

- END -

Ex 8

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-17-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

March 17, 2003

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 127** (third reading copy - blue) **be concurred in as amended.**

Signed: *Senator Duane Grimes, Chair*

To be carried by Senator Duane Grimes

And, that such amendments read:

1. Page 4, line 15.
Following: "court orders"
Strike: "-- state attorney fees and costs"

2. Page 5, line 11.
Following: "action."
Insert: "A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion."

3. Page 23, line 20.
Following: line 19
Insert: "NEW SECTION. **Section 18. Coordination instruction.** (1) If House Bill No. 571 and [this act] are both passed and approved, then subsection (1) of 30-14-133 in [section 4 of House Bill No. 571] is amended to read: (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller~~,~~ ~~or~~ lessor, or service provider resides or has ~~his~~ its

Committee Vote:
Yes 6, No 2.

Amendments to House Bill No. 127
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 17, 2003 (12:43pm)

1. Page 4, line 15.
Following: "**court orders**"
Strike: "**-- state attorney fees and costs**"

2. Page 5, line 11.
Following: "action."
Insert: "A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion."

3. Page 23, line 20.
Following: line 19
Insert: "NEW SECTION. **Section 18. Coordination instruction.** (1) If House Bill No. 571 and [this act] are both passed and approved, then subsection (1) of 30-14-133 in [section 4 of House Bill No. 571] is amended to read: (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his~~ its principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim may be brought in justice's court. The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper.

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void."

- END -

principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim may be brought in justice's court. The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper.

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void."

- END -

AN ACT GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO $500; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO $10,000; MANDATING THAT THE DEPARTMENT HOLD A HEARING TO DECIDE IF A COST SURVEY SHOULD BE PERFORMED; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO $10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR PREVAILING PARTIES; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT ORGANIZATIONS; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-211, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, AND 30-14-506, MCA; REPEALING SECTION 30-14-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-102, MCA, is amended to read:

"**30-14-102. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

~~(1)~~(2) "Department" means the department of administration created in 2-15-1001.

~~(2)~~(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording~~, wherever situate~~.

~~(3)~~(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

~~(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.~~

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, ~~and~~ any property, tangible or intangible, real, personal, or mixed, ~~and~~ or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 2. Section 30-14-105, MCA, is amended to read:

"**30-14-105. Exemptions.** ~~Nothing in this~~ This part ~~shall~~ does not apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission or the state auditor ~~acting under statutory authority of this part or the United States~~; or

(2) acts ~~done by the~~ of a retail ~~merchants~~ merchant, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement~~,~~ when the merchant, publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement ~~and did not have a direct financial interest in the advertised product or service;~~.

~~(3) national advertising.~~"

Section 3. Section 30-14-111, MCA, is amended to read:

"**30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to believe that ~~any~~ a person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against ~~such~~ the person to restrain by temporary or permanent injunction or temporary restraining order the use of ~~such~~ the unlawful method, act, or practice~~,~~ upon ~~the~~ giving ~~of~~ appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action ~~where~~ in which the relief ~~to be~~ sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) ~~The~~ An action under this section may be brought in the district court in the county in which ~~such~~ a person resides or has ~~his~~ the person's principal place of business or~~, with consent of the parties, may be brought~~ in the district court of Lewis and Clark County.

(4) ~~The courts are~~ A district court is authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part~~, and such injunctions shall be issued without bond~~, and an injunction must be issued without bond."

Section 4. Section 30-14-131, MCA, is amended to read:

"**30-14-131. Restoration -- court orders.** (1) The court may enter ~~make such additional~~ orders or judgments ~~as may be~~ necessary to restore to ~~any~~ a person any ~~moneys~~ money or property, real or personal, ~~which~~ that may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

(2) The court may enter any other order or judgment required by equity to carry out the provisions of this part."

Section 5. Section 30-14-133, MCA, is amended to read:

"30-14-133. Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence. (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual ~~but not~~ but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his~~ its principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim may be brought in justice's court. The court ~~may, in its discretion,~~ may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section~~, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ the judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ is prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103."

Section 6. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) ~~A~~ In addition to any fine that a person might be subject to under subsection (2), a person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than $10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases, the department, acting in the name of the state, may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully

used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than ~~$1,000~~ $10,000 for each violation. The fine provided for in this subsection is in addition to any liability that a person might be subject to under subsection (1).

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined an amount not more than $5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. ~~Nothing in this~~ This subsection ~~limits~~ does not limit any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103."

Section 7. Section 30-14-211, MCA, is amended to read:

"30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, ~~establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall,~~ as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing ~~such~~ the cost survey. The hearing ~~shall~~ must be held at the office of the department and upon ~~that~~ notice ~~which~~ that the department may require by rule. However, notice of the hearing ~~shall~~ must be published for at least 2 successive weeks in the daily newspaper or newspapers ~~as~~ designated by the department ~~may designate~~ as the most commonly circulated in the counties ~~to be~~ affected by the cost survey. The notice ~~shall~~ must further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by ~~it~~ the department as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts ~~thereof~~ of a particular trade or business, to be affected, determine ~~and delimit~~ the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost ~~which~~ that would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost ~~which~~ that would probably be incurred by the most efficient person

in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined ~~shall~~ must be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey."

Section 8. Section 30-14-219, MCA, is amended to read:

"**30-14-219. Recovery on illegal contracts forbidden.** A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 is an illegal contract ~~and no~~ upon which a recovery ~~thereon~~ may not be had."

Section 9. Section 30-14-220, MCA, is amended to read:

"**30-14-220. Enforcement by department.** (1) The department ~~shall~~ may prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department ~~shall:~~ may

~~(a)~~ make its own investigation~~;~~.

~~(b) within 60 days of the finding of probable cause make a written report of its investigation; and~~

~~(c) mail a copy of its findings to the person initially giving notice of a violation.~~

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part ~~and~~ or if it appears to the department that a proceeding by it would be in the interest of the public, it ~~shall~~ may issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, ~~at a place~~ the location of the hearing, and ~~upon a day~~ the date of the hearing, which may not be less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) ~~The~~ A person ~~so complained against~~ who is the subject of a complaint may appear at the ~~place and time so fixed~~ hearing and show cause why an order should not be entered by the department requiring ~~such~~ the

person to stop the violation of the law charged in the complaint.

(d) Any person may ~~make application~~ apply and upon showing good cause ~~shown may~~ be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding ~~shall~~ must be reduced to writing and filed with the department.

(f) If upon the conclusion of the hearing the department ~~believes~~ determines that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring ~~such~~ the person to stop the ~~acts~~ act or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue ~~such~~ writs ~~as~~ that are ancillary to its jurisdiction or that are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall ~~thereupon~~ issue its own order ~~commanding obedience to~~ requiring compliance with the terms of the order of the department.

(6) Proceedings under this section ~~shall~~ must be given precedence over other civil cases pending in the district court and ~~shall~~ must be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than ~~$1,000~~ $10,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part."

Section 10. Section 30-14-222, MCA, is amended to read:

"**30-14-222. Injunctions -- damages -- production of evidence.** (1) Any person~~, if~~ who is or will be injured ~~thereby~~, the department, or the attorney general may maintain an action to enjoin ~~a continuance of~~ an act that is in violation of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 and for the recovery of damages. If ~~in such action~~ the court finds that the defendant is violating or has violated any of the provisions of 30-14-205, 30-14-214 or 30-14-216 through 30-14-218, it shall enjoin the defendant ~~from a continuance thereof~~. It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to ~~such~~ injunctive relief, the plaintiff is entitled to recover from the defendant the greater of three times the amount of actual damages sustained or $1,000.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to $500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of ~~any such~~ the defendant may be brought into court and introduced into evidence by reference. ~~No information so~~ Information obtained pursuant to this subsection may not be used against the defendant as a basis for ~~a misdemeanor~~ prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, ~~and~~ or 30-14-224.

(4) In an action brought by a party other than the state, the prevailing party is entitled to attorney fees and costs."

Section 11. Section 30-14-223, MCA, is amended to read:

"30-14-223. ~~Department to institute~~ Department's institution of suit. Upon the ~~third~~ violation of any of the provisions of 30-14-205, 30-14-214 or 30-14-216 through 30-14-218 by any business, the department ~~shall~~ may institute ~~proper suits or quo warranto proceedings~~ a proceeding in a court of competent jurisdiction for the forfeiture of ~~its~~ the business's charter, rights, franchises or privileges, and powers exercised by ~~such~~ the business and to permanently enjoin it from transacting business in this state. If in ~~such action~~ the proceeding the court finds that the business is violating or has violated any of the provisions of 30-14-205, 30-14-214 or 30-14-216 through 30-14-218, ~~it~~ the court shall enjoin the business from doing business in this state permanently or for ~~such~~ a period of time ~~as~~ that the court orders or the court shall annul the charter or revoke the franchise of ~~such~~ the business."

Section 12. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) ~~Except as otherwise provided in this section, a~~ A person, whether as principal, agent, officer, or director, who purposely or knowingly violates any of the provisions of ~~30-14-206 through 30-14-218~~ 30-14-207 through 30-14-214 or 30-14-216 through 30-14-218 is guilty of ~~a misdemeanor~~ an offense for each ~~single~~ violation and upon conviction ~~thereof shall~~ may be fined an amount not ~~less than $100 or~~ more than ~~$1,000~~ $10,000 ~~or~~ or imprisoned for a term not to exceed ~~6 months~~ 2 years, ~~or both~~, or both.

(2) A violation of 30-14-205 is punishable by imprisonment ~~in the county jail~~ for a period of not ~~less than 24 hours or~~ more than ~~1 year~~ 5 years ~~or by~~, and the offender may be subject to a fine in an amount not exceeding $25,000~~, or both~~.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the convicted person ~~so convicted~~. ~~In such case no~~ A new license may not be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with ~~him~~ that person in ~~such~~ that business for a period of ~~1 year~~ 5 years."

Section 13. Section 30-14-501, MCA, is amended to read:

"30-14-501. Purpose. The purpose of this part is to afford ~~consumers~~ persons subjected to high pressure personal solicitation sales tactics a cooling-off period."

Section 14. Section 30-14-502, MCA, is amended to read:

"30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller ~~who regularly engages in transactions of the same kind~~ to sell goods or services ~~which are primarily for personal, family, or household purposes,~~ when either the seller or a person acting for ~~him~~ the seller contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer, prior to the attempted sale, personally knows the identity of the seller, the name of the business, firm, or organization ~~he~~ that the seller represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; ~~or~~

(d) an attempted sale of an insurance policy; or

(e) an attempted sale of more than $5,000 of goods or services that are not primarily for personal,

family, or household purposes.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for ~~him~~ the seller~~,~~ ~~provided~~ if the buyer is required to give consideration in excess of $25 in cash or credit ~~therefor~~.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including an assignee of a seller."

Section 15. Section 30-14-503, MCA, is amended to read:

"**30-14-503. Disclosure obligation.** Before any personal solicitation, each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization ~~he~~ that the seller represents, and the identity or kinds of goods or services ~~he~~ that the seller wishes to demonstrate or sell~~, and that he wishes to demonstrate or sell the identified goods or services~~. When the initial contact is made in person, the seller shall also show the potential buyer an identification card ~~which~~ that clearly states the seller's name and the name of the business or organization ~~he~~ that the seller represents. The disclosures required by this section ~~shall~~ must be made before asking any questions or making any statements except an initial greeting. ~~Nonprofit organizations are exempt from the requirements of this section.~~ Failure to provide the information required by this section may be punished by a civil fine of not more than $1,000 for each violation."

Section 16. Section 30-14-506, MCA, is amended to read:

"**30-14-506. Repayment to buyer -- retention of goods by buyer -- court award, costs, and attorney fees.** (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the ~~down payment~~ downpayment includes goods traded in, the goods ~~shall~~ must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the ~~cash down payment~~

downpayment or goods tendered as ~~down payment~~ downpayment, ~~he~~ the seller ~~shall be~~ is liable to the buyer for the entire ~~down payment~~ downpayment, and if the buyer is successful in ~~his~~ a court action ~~therefor~~ for recovery, the court shall also award ~~him~~ the buyer ~~$100~~ $500 plus reasonable ~~attorneys'~~ attorney fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered ~~to him~~ by the seller and ~~shall have~~ has a lien on the goods ~~in his possession~~ or control for any recovery to which ~~he~~ the buyer may be entitled."

Section 17. Repealer. Section 30-14-215, MCA, is repealed.

Section 18. Coordination instruction. (1) If House Bill No. 571 and [this act] are both passed and approved, then subsection (1) of 30-14-133 in [section 4 of House Bill No. 571] is amended to read:

"(1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, or service provider resides or has ~~his~~ its principal place of business or is doing business to recover actual damages or ~~$200~~ $500, whichever is greater. An individual claim may be brought in justice's court. The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ any other equitable relief ~~as~~ that it considers necessary or proper."

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void.

Section 19. Effective date. [This act] is effective on passage and approval.

- END -